

# **Identification of Assured with his servants in Marine Insurance**

With focus on Shipowning structures, Master and Crew



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# **1 Introduction**

## **1.1 Topic & Background**

The topic of this thesis is to examine identification problems in marine insurance related to assured and his servants together with a focus on shipowning entities and shipmanagement organisation. For the sake of simplicity, by marine insurance, it is meant hull insurance for ocean-going ships, i.e. casualty insurance covering material loss of or damage to hull and machinery. That's because the concept of other shipowning insurances does not differ in terms of the identification concept, except P&I insurance which consists of special set of rules that are not part of a systematic law approach.

By identification problem, it is meant the responsibility of the conduct of others acting on behalf of the individuals or parties in marine insurance context. As a person or company that is entitled to claim the insurance compensation, assured, has a very important concept in identification issue. It is clear that misconduct of the assured that resulted loss by the assured's own actions or omissions shall directly be addressed to the assured in marine insurance<sup>1</sup>. If the assured is an individual person, it is quite clear that he would be responsible for his own actions. But when assured is not an individual person, eg. a shipowning company, actions of the company that results breach of due disclosure or due care such as alteration of risk, seaworthiness, safety regulation, change of flag, management and ownership, would result loss of the right of assureds compensation from insurer. As a result, if there is a breach of these provisions by the assured's servant, question arise if insurer can invoke this breach against assured.

With this regard, in marine insurance contracts, the assured is often a shipowning organisation which consists of many people serving like marine superintendents, fleet

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<sup>1</sup> Wilhelmssen/Bull p.190

managers, owner representatives, designated person ashore or a general manager. Because of the different people performing work for the shipowning organisation, problem arises in the context of deciding the individuals who has authority to represent the company. Although identification problem seemed to be solved if insurance contract includes provisions concerning the individuals in assured internal organization who has autonomy to act as assured, the identification problem still continues because of the servants of the assured in external organizations such as the situations that assured identified with the organisations other than assured's own, e.g where one or more central operational functions are transferred to other companies. So there is still a need of systematic approach to the identification issue. This problem especially emerges in marine insurance systems that do not contain rules on identification in insurance matters like UK marine insurance legislation. So in the concept of this thesis, it is aimed to compare the UK system with Norwegian context to show the possible solutions in different approaches and the advantages to have identification legislation in marine insurance.

On the other hand, the position of Captain and ship crew differs from the concept of servants in internal and external body of an shipowning entity as assured, since faults or negligence committed by the master and crew are one of the risks for which the shipowner should have unconditional marine insurance cover in marine insurance in tradition in marine insurance systems.<sup>2</sup> This situation resulted for insurer not to invoke against the assured faults or negligence committed by Captain or crew in connection with their service as seaman. But the wording "faults or negligence ... in connection with their service as seamen" indicate the contrast with errors concerning the commercial functions which the ship's master sometimes carry out on behalf of the shipowner whereas identified as assured. So the special position of Captain and ship crew where to identify them as assured in the context of marine insurance is another important concept examined through this thesis.

It is also important to define the shipowning structures to solve identification problem among such organisation. Since different functions of individuals in a decentralised

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<sup>2</sup> Wilhelmssen/Bull p.195

land organisation lead different rights and capacities, the position of the servants in the company need to be examined. To provide this, the shipowning entity and the key persons in this entity that has right to represent shipowning company in a marine insurance context is focused. In this concept different kind of structures such as Sole proprietorships, joint ventures, part ownership, partnership, limited partnership and shipmanagement organisations are described to give the right answer in identifying the assured. Since modern management philosophy places great emphasis on decentralisation of the management function, the situations when ship management company is different from the actual owner is also questioned. In the concept of management agreements, the individuals who has the right to represent assured are also analysed.

As a general concept, the identification issue is on one hand closely related to the rules concerning vicarious liability and legal responsibility for others. So where it is relevant, identification problems are aimed to be supplemented by general liability principles together with marine insurance regulations. This situation is actually more relevant for the UK system where identification rules are not particularly defined.

## 1.2 Outline of the thesis

In order to facilitate an examination of this topic, marine insurance and the identification issue is placed in a historical, legal and practical context.

Section 2 outlines the legal framework of marine insurance which base the identification concept, relevant background law and jurisprudence.

Section 3 provides the practical and historical information on marine insurance with a description of special types and focus on hull insurance.

Section 4 outlines characteristic features of the identification issue in marine insurance related to assured and his servants.

Section 5 discusses different approaches in Norwegian context and UK legislation concerning identification of assured with his servants.

Section 6 contains detailed information on identification of assured with master and crew.

Section 7 discusses shipowning entities and shipmanagement agreement to give a clear picture of the organisations.

The final section summarises the main points with an emphasis on possible solutions to the identification problem in marine marinsurance.

## **2 Legal Sources**

### **2.1 Relevant background law**

In Norway, general insurance contracts are regulated in the Insurance Contracts Act of 1989 (ICA). However, the ICA contains few provisions concerning the Identification issue and is not applicable to the shipowning insurance contracts. Since Hull insurance, which is the type of marine insurance based in this thesis to explain the identification issue, is regulated by the Norwegian Marine Insurance Plan of 1996, Version 2010 (NMIP), this Norwegian source of legislation mainly tried to be explained. The NMIP is an agreed document, a standard contract that is constructed by representatives of all the interested parties to the contract.<sup>3</sup> In Norway, there has been a long tradition for marine insurance contracts to be constructed by broadly based committees consisting of representatives of both the insurers, the assureds, and other interested groups<sup>4</sup>. The NMIP is also supplemented by comprehensive material, named Commentary to the Norwegian Marine Insurance Plan of 1996 version 2010. This Commentary has been

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<sup>3</sup> Falkanger/Bull/Brautaset, p.505

<sup>4</sup> Wilhelmsen/Bull, p.28

written by the parties that are part of the construction of the Plan, and is intended to be part of the negotiations leading to the provisions in the Plan<sup>5</sup>.

English marine insurance is regulated by the Marine Insurance Act of 1906 (MIA). The MIA contains very few relevant rules for the problem to be discussed here. However, it is possible to find some other relevant condition in a set of clauses named the International Hull Clauses of 01.11.2002. These clauses were revised on 01.11.2003. In the relevance of the topic discussed identification issue here, these two legislations are used. Additionally general vicarious liability legislation in common law is also touched in relevant context. Since liability issue is outside the scope of this thesis, Norwegian legislation is used as the legal framework of this identification issue.

## 2.2 Case law

Case law is an important source for interpretation of the provision contained in the legal sources. But unfortunately there were no decisions directly taken on the identification problem of the assured with his servants. However, some aspects of concern for this thesis are discussed in Norwegian and English case law. References are made to some other case law in discussions of the liability and identification issues whether such concerned provisions may be adjusted by court decisions.

## 2.3 Legal literature

Legal literature is not a source of law in the strictest sense. But it is useful to find arguments for a position, and arguments that are particularly relevant in case they are written by a person of authority in the field. The literature also gives systematic presentation and review of the relevant legal sources.

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<sup>5</sup> Wilhelmssen/Bull p.29



### 3 Marine Insurance Industry

#### 3.1 Brief History of Codification of Marine Insurance

Marine insurance is considered to be the earliest well-developed kind of insurance, that origins in the Greek and Roman maritime reserves in 210 B.C<sup>6</sup>. Before separate marine insurance contracts were developed in Italy in the fourteenth century and spread to northern Europe, references made around 50 B.C show that certain elements of modern marine insurance were already present such as risk assumption, insurable interest and payment of premium<sup>7</sup>. This shows that marine insurance has very ancient roots that makes the concept well sophisticated today.

After those times, various forms of marine insurance have flourished in Europe. It is known that merchants of Europe had an insurance center based at Bruges, named Chamber of Insurance<sup>8</sup>. But improvement of marine insurance codification was achieved by act that passed in Great Britain in 1601<sup>9</sup>. This act was known as “An Act Concerning Matters of Assurances Amongst Maerchants” and considered as the first statute book regarding marine insurance<sup>10</sup>. As the years passed the need for codification in marine insurance increased because of the huge number of marine contracts entered into. In 1745 an new marine Insurance Act was entered into in UK. According to the act, those providing marine policies prohibited the practice of insuring on the basis of “policy proof of interest”<sup>11</sup>. There had been two updates of this act in 1788 and 1795 which required that all policies of marine insurance to be in writing and to be stamped.

While development of marine insurance legislation contiuing in the UK, the first sophisticated codification of marine insurance law was achieved in another important maritime country of Europe, Norway, with the Norwegian Marine Insurance Plan

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<sup>6</sup> J. Franklin, *The Science of Conjecture: Evidence and Probability Before Pascal* (Baltimore: Johns Hopkins University Press, 2001), p.273-278

<sup>7</sup> Gard Handbook on P&I Insurance, p. 60

<sup>8</sup> Gard Handbook on P&I Insurance, p. 61

<sup>9</sup> Gard Handbook on P&I Insurance, p. 61

<sup>10</sup> Noussa K, article on History of Marine Insurance in England

<sup>11</sup> Noussa K, article on History of Marine Insurance in England

(NMIP) published in 1871<sup>12</sup>. This was a new approach to the marine insurance field since a civil law point of view was introduced in the field of marine insurance. NMIP has later been followed by the Plans of 1881 and 1894. On the other hand, The Marine Insurance Codification Bill was introduced in UK in the House of Lords in 1894 which provided the basis for the 1906 Act<sup>13</sup>. After NMIP was revised 2 times, the Marine Insurance Act (MIA) was passed in United Kingdom in 1906, which codified 200 years of juridical decisions and the previous common law in force. It was actually both an extremely thorough and concise piece of work and still guiding the most of the marine insurance contracts in use. Even different countries developed their marine insurance context by the years, today, these two legislations, UK MIA and NMIP can be considered as two main and well developed sources of marine insurance regulations in the marine insurance market.

It is indisputable that there was no clear identification of different types of marine insurance in the beginning of 1900s so the concept of codification in marine insurance continued to evolve. While new versions of NMIP published in 1907, 1930, 1964 and 1996, MIA remained as an unchanged source of marine insurance contracts in its published form. That's why, today, many think that UK MIA is out of date, however, it is remarkable the extent to which it has covered various legal issues in connection with marine insurance law and practice. Moreover, its' combination with the Institute Clauses makes it additionally stronger.

### 3.2 Marine Insurance in General

Marine insurance is a type of insurance that deals with the marine perils, which means losses incident to marine adventure. The protection of this type of insurance is exercised through a marine insurance contract whose items are composed through the guidance by unified marine insurance codes or regulations described above. According to the Marine Insurance Act 1906, a contract of marine insurance is defined as follows;

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<sup>12</sup> Wilhelmsen/Bull, p 28

<sup>13</sup> Noussa K, article on History of Marine Insurance in England

“A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed against marine losses, that is to say, the losses incident to a marine adventure.”<sup>14</sup>

Like all insurance contracts, a marine insurance contract is set out in the form of a marine insurance policy which shows the agreement between insurer and insured parties and is constructed by ordinary principles of contract law.

In marine insurance, parties entering into the contract are defined differently in different systems. In Norwegian context, the person entering into the insurance contract with the insurer and who pays the premium is actually the one entitled to compensation from the insurer. This person is called person effecting insurance<sup>15</sup> whereas the same person is identified as assured in general according to the English legislation. This distinction gives different rights and obligations to these parties according to their context in legislation. On the other hand the party who has undertaken to grant insurance is referred as the insurer<sup>16</sup> who gives protection for loss assured faced.

The types for marine insurances are composed as the need for different types of protection for the assured. When we look at the shipowners' side, protection is associated with vessels will thus primary interest for shipowner<sup>17</sup>. Shipowning insurances are regulated by NMIP 96 version 2010 in Norwegian context and protection arose in several different concept of insurance. Firstly there is a need for protection of the property of a shipowner which is known as hull insurance or hull & machinery insurance. Hull insurances are directly linked to the ships capital value and are foremost and oldest type of shipowning insurances. Secondly there is a need for protection against the loss of the earning in case of the loss of income, that is known as loss of hire insurance. Thirdly, separate protection in case of war or warlike situations are called as war risk insurance. There is also a separate type of insurance for the

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<sup>14</sup> MIA § 1

<sup>15</sup> NMIP § 1-1

<sup>16</sup> NMIP § 1-1

<sup>17</sup> Falkanger/Bull/Brautaset, p.501

liability against the third parties which can be considered as a part of shipowning insurance. That is known as Protection and Indemnity (P&I) insurance. But this type of insurance is regulated by special set of rules that are composed by the insurers known as P&I clubs so there is no unified systematic legislation for them in marine insurance context.

The need for marine insurance for the owner of the cargo is also absolut. This type of insurance is associated with the carriage of goods at sea as well as on land. This type of insurance is foremost a property damage insurance and called cargo insurance. Cargo insurance have several distinctions from shipowning insurances and is regulated by Insurance Contract Act of 1989 (ICA). For that reason, the scope of this study will not include cargo insurance.

### 3.3 Hull Insurance and relevance in context

Hull insurance is the oldest type of marine insurance which is a foremost property insurance covering damage and total loss of the insured ship. Traditionally hull insurance covers three different types of loss. These are total loss of the ship, damage to the ship and the owner's liability for damage to another ship as a result of a collision<sup>18</sup>. At the same time being a property insurance, hull insurance traditionally covers the shipowner's liability in special cases like collision situations with other ships or strikes with other fixed or floating objects<sup>19</sup>.

In terminology, hull insurance is also called as hull and machinery insurance in English context. Since by a hull insurance it is meant a cover for both hull and and the machinery including euipment, spare parts, bunkers and lubrication oil, the subject of hull insurance is the ship herself.

Since the concept of ship is wide covering from big ocean going vessels to small fishing boats and pleasre crafts, we can say that that hull insurance is applicable to all. For the

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<sup>18</sup> NMIP §10-4

<sup>19</sup> Gard Handbook on Hull Insurance, p.78

sake of simplicity it is meant the insurance for ocean-going conventional commercial ships by the term hull insurance in this thesis.

The relevance of hull insurance with the identification issue comes from the regulation. The insurance conditions that are stated in NMIP Part 1 are first and foremost conditions for hull insurance<sup>20</sup>. The reason for this is the fact that hull insurance is considered as fundamental of marine insurance that common rules are structured. Since identification issue is applicable to all types of marine insurance according to NMIP, as the other rules in chapters 1 to 9, the provisions have the greatest significance in relation to various forms of hull insurance. That's why hull insurance is referred throughout this thesis.

## **4 Issue of Identification in Shipowning Insurances**

### **4.1 Characteristic Features**

In a marine insurance contract, it is important for insurer to get the best knowledge of the insured venue and during the insurance period insurer must be sure that the risk exposure does not change significantly. The party entering into contract with the insurer has a central duty to provide these vital information and to keep the risk level same against the insurer in the beginning of and during the insurance period. This phenomena is called as the duty of disclosure and due care during the insurance period<sup>21</sup>.

Since the rules of disclosure and due care are quite extended and regulated specifically, I am not going to deep in this topic. But it is important to know that, these rules are considered as the definition of the information that must be transferred to the insurer in the beginning of the insurance contract and as the practice of the care that assured must satisfy in term of the risks for the validity of the insurance contract.

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<sup>20</sup> Commentary p.12

<sup>21</sup> Wilhelmssen/Bull, p.137

Several of the duties of care that are contained in a marine insurance contract can be addressed to the assured. This holds generally for provisions concerning alteration of risk, seaworthiness and safety regulation, and in some cases also for change of flag, management and ownership<sup>22</sup>. This means that the regulation concerning loss caused by the assured's own actions or omissions that are part of the above are described duties, is addressed to the assured, and implies that the duty of due care is a duty of the assured<sup>23</sup>. In this case if assured is an individual, it is obvious that individual would be responsible to satisfy these duties. But if assured is not an individual and composed of a complex shipowning entity with several employers or a shipmanagement organization that has delegated set of functions with respect to these duties? The question then arises to what extent the acts or omissions of others or servants under the service of this organisation may bar the assured's right to indemnity.

Likewise, if there is a breach of the provisions by a third party, like the assured's servant or another assured, co-assured, the question is to what extent the insurer may invoke this breach against the assured. The issue of identification, or with other words, the responsibility of third persons, presumes that the exclusion will only apply if the assured is guilty of negligence or misconduct<sup>24</sup>. If the exclusion will be the case, as a result there will be no identification issue regardless of fault on the part of the assured. In that situation, the insurer will be able to invoke the exclusion whether the assured or any third party is at fault or not. For the exclusions that are part of the change of ownership, flag or management, there is no problem of identification as this is defined in Scandinavian law context<sup>25</sup>. That results the assured automatically be identified with a third person not having fulfilling the conditions of the policy. However, the situation in common law context can still have different results since it does not necessarily mean that the insurer may invoke a breach of a warranty against other assureds than the one responsible for the breach<sup>26</sup>.

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<sup>22</sup> Wilhelmsen, p.137

<sup>23</sup> Wilhelmsen/Bull, p.139

<sup>24</sup> Wilhelmsen, p.138

<sup>25</sup> Commentary, p.114

<sup>26</sup> Wilhelmsen, p.138

As described, the issue of identification or responsibility for others is also relevant for a breach of the duty of disclosure. On this point, however, there is a conceptual difference between Scandinavian marine insurance and the other law systems. The Scandinavian system distinguish between the person effecting the insurance and the assured<sup>27</sup>. The person effecting the insurance is called to the person who entering into the insurance contract with the insurer. This person is typically would also be the beneficiary under the policy and the foremost person right to claim compensation in connection with an insured casualty<sup>28</sup>. On the other hand the assured would be the person who has the right of indemnity when a casualty occurs. As per the ordinary insurance terminology, the assured has an economic and legal interest in the matter insured. The requirement of an economic and legal interest is a common feature of both common and civil law. The reason for the mentioned distinction in some civil law systems is that the person effecting the insurance need not be the assured under the contract, thus he may not have a right of recovery<sup>29</sup>. The distinction can be defined as the duty of disclosure, which is connected to the negotiations and pre phase of the insurance contract is addressed to the person effecting the insurance, whereas the duties connected to the running insurance period are addressed to the assured under Scandinavian maritime system. In the concept of this thesis the duties concerned to the insurance period are aimed to discuss so I am not going to deep in the identification issues concerning the person affecting insurance.

It is also important to note that identification issue mentioned herein does not aim to find out who is the real assured. The question of identification that is under focus are the different duties imposed on the assured while the insurance is running. In the concept of third party fault, who is in breach of these duties, is the situation where assured uses a servant. This servant may be part of the assured's own organization, which is called as internal identification or part of another organization, which is called external identification<sup>30</sup>. Moreover, two or several assureds may also be involved in

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<sup>27</sup> NMIP §1-1

<sup>28</sup> Falkanger/Bull/Brautaset, p.506

<sup>29</sup> Wilhelmsen, p.139

<sup>30</sup> Commentary, p.110

some situations. In this situation there is a question arise if faults committed by one assured may bar the other assured's right of recovery.

Following chapter, in the light of above facts, distinctive situation in identification of the assured with his servants will be analysed. If the assured is a company, then identification issue will depend on who is entitled to represent the company or has the authority to act on behalf of the company. If a limited liability company is stated as being the assured, actions taken by the management level like directors or chief executive officer of that company will be deemed to be actions of the company itself<sup>31</sup>. Ideal approach will be the company management is considered as the company<sup>32</sup>. However, this distinction may only be established if there are separate provisions concerning who acts on behalf of the company and identification<sup>33</sup>. Since, in law systems that do not operate with the concept of identification in marine insurance context, the distinction between who is the company and whose acts or omissions the company should be held responsible is less clear. The most relevant system here, as a common law country, UK legislation, which do not deal with the concept of identification in marine insurance. The problem is solved as per general contract law applicable to agency and liability rules for servants<sup>34</sup>. So examination of UK legal context with Norwegian system shall give clear clues of the solutions in identification of assured in marine insurance context.

## 4.2 Identification of the assured with his servants

Identification of the assured with his servants is relevant in the situation where the assured's servant has breached some of the duties of the assured towards the insurer. As tried to be described above, duties of the assured against insurer will normally be addressed to the assured, implying that a breach made by a third party, especially the servant, may not be invoked against the assured. For the identification perspective the problem herein is to what extent the insurer may invoke a breach made by a 3<sup>rd</sup> party ,or

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<sup>31</sup> Falkanger/Bull/Brautaset, p.523

<sup>32</sup> Commentary, p.126

<sup>33</sup> Wilhelmsen pp.139

<sup>34</sup> Wilhelmsen/Bull, p.190



a servant, against the assured. This problem is, on the other hand, closely connected to the general regulation concerning vicarious liability and legal responsibility for others<sup>35</sup>.

Actually vicarious liability principle is more applicable in marine insurance context in the UK system since the identification principle is not defined separately. As definition, vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency, the responsibility of any third party that had the "right, ability or duty to control" the activities of the one who breaches duties in general terms<sup>36</sup>.

According to this principle in English system, an employer generally will be held liable for any tort committed while an employee is conducting their duties<sup>37</sup>. Additionally in the historical practice, it was held that most intentional conducts were not in the course of ordinary employment, but recent case law suggests that where an action is closely connected with an employee's duties, an employer can be found vicariously liable<sup>38</sup>. It should thus be kept in mind that the principles of identification may be supplemented by these general principles, and that the assured may be held responsible for others to a greater extent than for what follows from the marine insurance regulation alone.

However, insurance law doctrine tempers the freedom of negotiation for an insurance contract, that of utmost good faith. That's why Marine insurance contracts are *uberrimae fidei* which means that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal<sup>39</sup>. This contrasts with the legal doctrine *caveat emptor* (let the buyer beware). The duty, independent from the insurance contract itself<sup>40</sup> is stated in the section 17 of Marine Insurance Act 1906:

“A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.”

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<sup>35</sup> Wilhelmssen, p.140

<sup>36</sup> Laski, H 'Basis of Vicarious Liability' (1916) 26 Yale Law Journal 105

<sup>37</sup> Markesinis/ Johnston/Deakin, p. 665)

<sup>38</sup> Steele, p. 578

<sup>39</sup> Staring S. Graydon, 2001

<sup>40</sup> Chauah, p.412

This general practice in English law has been also mentioned in MIA section 55 (2) letter a with a general rule stating that “insurer would not be liable for any loss attributable to the wilful misconduct of the assured”. If we can identify the servant with the assured as a party braching the duty, then such actions would be under assureds responsibility and insurer would not be liable.

It is a general tradition in marine insurance that provisions protecting the assured against the breaches made by the master or crew of the ship are regulated, not invokable for an insurer by the faults of them. That means, rules concerning this issue would restrict insurer to identify assured with master or crew. But there would be some exceptions if assured can be identified by these people if they are owner of the shipping company or member of a decision making organs in a company. I will get into this topic later. But contrary to this special regulation, there is no special rules concerning other servants that can be identified as assured. To the extent that such regulation is incorporated in the marine insurance acts or conditions, it has normally been written in very general terms, and in many systems this question is left to be solved by more general legal principles<sup>41</sup>. However, according to the latest amendment in Norwegian Insurance Contract Act of 1989, a provision was made stating that the insurer would have no right to identify the assured with his servants unless such identification was provided for in the insurance condition<sup>42</sup>. According to this rule, the insurer is free to include provisions concerning identification, whatever servant can be identified but if he fails to do so, he may not invoke the faults of the assured's servants against the assured. Actually this regulation resulted a shift in the legal principles of identification in insurance contracts that are regulated by NMIP. For the sake of identification doctrine to be applicable, I would not deal with this regulation alone.

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<sup>41</sup> Wilhelmssen, p.141

<sup>42</sup> Wilhelmssen p.141

### 4.3 Main Rules concerning the Identification of the assured with his servants

In marine insurance, the question of identification of the assured with his servants arise in the contracts that entered into between assured and the insurer. Although, it can be seen in many law systems that they contain terms stating that faults made by the assured's servants may be invoked against the assured, the approach of the regulation varies<sup>43</sup>. Diversity means the systematic approach of the regulation in identification, as the position of the servant against the assured, what kind of faults can be invoked by insurer or whether identification is just in the internal employees within company or applicable to servants in other organizations. This distinction is described as internal identification and external identification<sup>44</sup>.

In a systematic approach of identification issue, provisions concerning identification are included in the specific regulation concerning the duties of the assured. We can see this approach in Norwegian regulations as unified rules concerning identification in NMIP § 3-36. However, in UK, provisions connected to this identification issue are contained only in the regulations that are the part of general acts or omissions (negligence and intent or willful misconduct) of the assured<sup>45</sup>. Despite, in the Scandinavian systems, there are also special identification clauses in the provisions concerning safety regulation<sup>46</sup>. And as described before, there are no other specific regulation concerning identification issue in UK context. Both the UK MIA sect. 55 (2) letter (a) concerning willful misconduct and the MIA sect. 39 (5) concerning seaworthiness in time policies are, however, interpreted so as to address not only the assured, but also his "alter ego"<sup>47</sup>. Today we can see the implementation of alter ego principle in International Safety Management System in Shipping industry. It is actually a result of the fear that shipowners possibility of loosing their legal right to limit their financial liability in the event of their ship being involved in some major accident<sup>48</sup>. These fears center around the extensive documentation which is going to be created by a properly working Ship

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<sup>43</sup> Wihelmsen p 142

<sup>44</sup> Commentary, p.110

<sup>45</sup> Wihelmsen p.142

<sup>46</sup> Hellner p.294, Lyngso p.304

<sup>47</sup> Arnould § 786

<sup>48</sup> Anderson, p.94

management system and which might incriminate the owner or senior levels of management of a shipowning company and also the role of the designated person ashore and what the possible implications of the state of knowledge of the owner or the alter ego of the company.

When the case includes misconduct or gross negligence, the point is that there is no identification issue concerning other duties of the assured, for example, concerning alteration of risk, seaworthiness, safety regulations or change of flag, ownership and management. However, if the insurer may invoke only gross negligence or willful misconduct, which is the normal rule it would not be probable for him to identify the assured with a servant who negligently breaches the more specific duties<sup>49</sup>. Some other specific exclusions that are objective and can be invoked regardless of fault, there will be no need for identification, in respect of the warranties contained in a policy. On the other hand, if breach of duty is connected to ordinary negligence, a provision for identification concerning gross negligence and willful misconduct will not apply to negligence concerning the more specific exclusions<sup>50</sup>. In such case, the insurer will not have right to invoke identification provision, unless more general principles can be applied.

## **5 Different Approaches to the Identification of Assured with his Servants**

### **5.1 Norwegian approach to the identification of assured with his servants**

The Norwegian approach to hull insurance in this issue gives a more flexible tool as these conditions contain general identification rules connected to faults and negligence<sup>51</sup>. According to the subparagraph 2 of NMIP §3-36;

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<sup>49</sup> UK MIA, section 55 -2

<sup>50</sup> Wilhelmssen pp.143

<sup>51</sup> NMIP §3-36

“The insurer may invoke against the assured faults and negligence committed by any organisation or individual to whom the assured has delegated authority concerning functions of material significance for the insurance, provided that the fault or negligence occurs in connection with the performance of those functions.”

That comes from the text identification can be invoked against any organisation or individual provided the assured has delegated authority concerning material significance for the insurance to his organisation or individual and fault has occurred in connection with performance of those functions<sup>52</sup>. In this approach identification is linked through a contractual basis with functional requirement. Individuals or organisations are not aimed to be listed to identify.

In the NMIP, decision making authority has been targeted to be delegated concerning functions of material significance for insurance. Since delegation of decision making authority is holding the power to act on behalf of the assured in this concept. In a common case, this decision making authority shall be indicated on the organisation chart but this can always not happen. If the power has not been delegated expressly, De facto delegation is sufficient if the organisation or person in question in reality will have the crucial decision making authority<sup>53</sup>.

The regulation concerning identification of assured and his servants also differs according to the definition of the group of servants to be identified with the assured. The general approach in civil law is that identification is limited to servants in senior positions, but it is not clear how far down in the hierarchy of the company the identification issue goes<sup>54</sup>. The same situation applies for some common law systems. The members of the group may be defined in more general terms as representatives, legal representatives, persons for whose conduct the assured is responsible by law or employees in a senior position.

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<sup>52</sup> Wilhelmssen/Bull, p.192

<sup>53</sup> Commentary, p.114

<sup>54</sup> Wilhelmssen p.145

According to the rule in NMIP, the identification concept of delegation involving functions of material significance for the insurance must be determined in each individual case. That's because we need to assess the situation if there is an identification issue there. On the other hand, generally, it was not believed expedient to attempt to set out precisely which persons or organisations the assured is to be identified with<sup>55</sup>. Since the choice of company form depends on many factors and as we know ship management organizations are composed in a wide different ways, from limited partnerships in which the owners do not involve in operations at all and have organised everything in separate companies, to large, professional shipping companies which do all the or most operational functions. On the other hand, there are also big differences in how operational responsibility is distributed internally in individual companies. We can see in the market that most shipowners have a central operational organisation on land, but some others have a small land-based organisation with wide-ranging powers delegated to low ranked position holders such as the superintendent.

Even there are some cases, that shipowners have a small land-based operational organisation or none at all. In this case, captain is given powers in relation to the operation of the ship and representing company. Moreover, modern shipmanagement implications places great emphasis on decentralisation of the management function, and in some cases it is natural to make the ship's officers part of the management. As we can see from these different examples, it is impossible to make a general rule that there is identification with certain individuals or companies.

The criterion for identification is based on the view that the shipowner must be free to organise ship operations as he sees fit, but that the assured must bear the consequences of the management model chosen<sup>56</sup>. When it is chosen to delegate a large portion of the management of a shipowning company to others, the assured must accept the responsibility for faults or negligence in the duty of disclosure or due care committed by the organisations or persons within the area of authority they have been given. And in this situation, the main point of identification then becomes who has been given the

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<sup>55</sup> Commentary, p.112

<sup>56</sup> Commentary, p 113

real authority in areas which are of significance for the insurance. So functions of material significance for the insurance refers to all types of management function regardless of whether they are grouped together or exist separately.

As the modern role of shipmanagement function has become more clearly defined, the operations that are organised through a separate management company or similar entity which has the overall responsibility for the ship's technical/nautical and commercial operation, then of course the assured must be identified with the manager. In view of this, the responsibilities of management companies actually was begun to be issued after the Marion Case in UK<sup>57</sup>. In this case M/V Marion was managed by a special management service company. The master of the vessel anchored on on a pipeline which caused a \$25 million claim. The reason for anchoring on the pipeline was the fault of master navigating with an outdated chart that does not contain information of that pipeline. After the inspection on board it was found out that there were large number of obsolete charts and chart updating was not carried out seriously. The House of Lords found that managing director of the shipmanagement company had a duty to ensure adequate degree of supervision was exercised over master as result of delegation of functions from shipowner. Additionally they found that he had failed to give proper instructions to his subordinates concerning the matters on which he required to be kept informed. The house of Lords accepted the view of Mr. Justice Sheen in the court stated that;

“When a ship is owned by a limited company and managed by another limited liability company the first question which arises is: to which of those companies should one look to see whether the owners are guilty of actual fault? It is not disputed nor can it be disputed in this Court that the answer to that question is that one looks to the managing company.”

Fortunately, the shipmanager was co-assured on the owners P&I policy and as a result, protected from the claim from the owners of the pipeline and also from the subrogation by the club.

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<sup>57</sup> The Marion (1984) 2 Lloyd's rep.

One step forward, if the situation concerning the management function that is divided into technical, nautical and commercial operations, there must also be identification in relation to the individuals who has the responsibility for the different functions, as these functions are of material significance for the insurance. Additionally the same applies for the individual or company who is responsible for crew management. If the individual management function is split up, it becomes more complicated to identify.

On the one hand, I must point out that the assured cannot avoid liability by dividing up management functions into as many units as possible since responsibility must be taken by the assured for the management model chosen. Even though the concept of the shipmanager is based on the law of the agency in UK<sup>58</sup>, Norwegian approach suggests that, not each and every element of the management responsibility will constitute a basis for identification, i.e, if a subordinate employee in the company is given responsibility for an operational function on one occasion<sup>59</sup>.

Actually there is no court practice directly concerning the issue of identification as stated in NMIP § 3-36 in Norway, but, some cases made attribution to the previous NMIP of 1964. In the first case, ND 1973.428 NSC HAMAR KAPP-FERGEN, the ferry named Hamar Kapp, sunk and lost during her lay up period. According to the court the loss was caused due to the failure of mooring and supervision, and the vessel was unseaworthy during lay up. Furthermore, the company was identified with its manager, L, who on behalf of the company was responsible for the lay up arrangements and the supervision. It is also emphasised that the main factor for the loss was general manager, L's fault as a person for supervision of the laid up vessel, not his personal performance of supervision.

In the second case, ND 1991.214 MIDNATSOL, the same approach was adopted. M/V Midnatsol which sank during her stay in berth was agreed by the court that casualty resulted due to the lack of supervision led the vessel became unseaworthy. The

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<sup>58</sup> Willingale, p.125

<sup>59</sup> Commentary, p.112



individual who was responsible for that failure was a board member/assistant who had authority to arrange for supervision while the ship was laid up for refitting. Furthermore he was holding minor block of shares in the shipowning company. Thus, it was not difficult for the court to identify that board member with company and the loss directed to the shipowner.

It is very important to distinguish the condition for identification as the fault or negligence occurring in connection with the performance of delegated authority. Thus the tasks that are not part of responsibility or the delegated authority would not be in concept of the identification<sup>60</sup>. But as stated before, the assured would accept the situation that he is being identified with a senior employee who has responsibility for organising supervision of a task. As we see from the the cases described above, identification in Norwegian context presupposes that the error should be committed during the performance of management functions on behalf of the assured. Moreover, identification issue will only be the case where the relationship between the assured who has responsibility for the operation of the ship and the party to whom the assured delegated his decision-making authority. In other words, identification applies only downwards in the organisational hierarchy linked to the operation of the ship, and not laterally among several parties because of their status as assureds under the policy<sup>61</sup>.

Here it is also essential to mention about an important feature of Norwegian marine insurance context for extended identification for the breach of safety regulation. This special point of view to the regulations concerning prevention of the loss, known as safety regulations, is a Nordic invention and not used in other legal systems<sup>62</sup>. In the norwegian context, this regulation includes extended rights of identification in relation to the acts of third party. It is enough to breach a special safety regulation contained in an insurance contract for insurer to invoke 3<sup>rd</sup> party as identified by assured. This situation is stated in NMIP §3-25 second paragraph. There it states,

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<sup>60</sup> Wilhelmsen/Bull, p.194

<sup>61</sup> Comentary, p.112

<sup>62</sup> Wilhelmsen item 7.4, CMI yearbook p.400 ff. Simply 2001 p.152 ff

“If the breach relates to a special safety regulation laid down in the insurance contract, negligence by anyone whose duty it is on behalf of the assured to comply with the regulation or to ensure that it is complied with shall be deemed equivalent to negligence by the assured himself.”

This rule is clearly explained in the NMIP commentary 2010. According to the commentary, if the insurer has found it necessary to impose a special safety regulation at the time the contract is entered into, he must be able to invoke negligence committed by anyone who is under a duty on behalf of the assured to comply with the regulation that is stated above<sup>63</sup>. In addition people who work in senior positions in the service of assured will have a duty to comply with the regulation.

However, there is a deviation from general identification rule in NMIP as there is no requirement that the person breaching safety regulation has been given authority concerning functions of material significance for the insurance. This is result of the fact that the compliance within safety regulation rule will always be counted as material significance for the insurance.

#### 5.1.1 Internal & External Identification

The other important difference in identification issue is the distinction whether the identification is internal only, or both internal and external. In Norwegian marine insurance context this situation is clearly defined as the concept of identification takes place in relation to organisations or individuals. Since identification regulation in NMIP §3-36 encompasses identification both externally and internally, the most relevant and common in practice is external identification. External identification refers to all cases where authority of importance for the insurance is entrusted to organisations other than the assured's own, e.g. where one or more central operational functions are transferred to other companies<sup>64</sup>. This is the case for a shipowning company if a function that is significance to the insurance transferred to another organisation like a

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<sup>63</sup> commentary p.111

<sup>64</sup> Commentary, p.112

shipmanagement compmany. Since this company would be delegated by the shipowner it will be identified with the owner when duty of due care is breached. Similarly if an individual is appointed and had authority for the functions related to insurance who is not part of an internat organisation of a shipping company he will be identified with the owner as a part of the external identification.

Another example for the external identification is usually seen in shipowning organisations that are formed in limited partnerships<sup>65</sup> In this kind of entity which owners have limited liability due to the formation of the partnership, functions are commonly delegated to the external organisations. Since shipowners that have not first hand know-how knowledge of the maritime sector prefer to delegate many of the functions traditionally to the experts in several areas, they become uninvolved in the operations at all. In that case large professional shipping company will take care of all or most operational function which result to be identified with the owner as part of external identification in marine insurance contracts.

On the other hand, internal identification refers to cases where individuals in assured's own organisation who have decision making authority concerning matters which are important for the insurance are identified as assured. Since internal composition of a shipowning company is complicated and has different levels of decision making servants, it is important to test an individual with functions of material significance for the insurance. According to this description, there is identification in a relative matter and authority such a case a marine superintendent will not usually have sufficient authority for him to be identified with the assured. However, it will be still the case that if the land-based organisation is limited in certain areas<sup>66</sup> such as a smal scale company that has employers in low level positions delegatd with large decision making authorities.

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<sup>65</sup> Ibid at p.35

<sup>66</sup> Commentary, p.115

## 5.2 English approach to the identification of assured with his servants

As I mentioned above, the common law approach on identification issue is less clear as this problem is not expressly regulated. In the UK MIA section 55 (2) letter (a) concerning willful misconduct and section 39 (5) concerning seaworthiness for time policies are, however, as mentioned interpreted to address the assured or his "alter ego" in the case of a corporate assured<sup>67</sup>. As a comparison with the UK system, as a part of common law system, American law uses the concept of "identification" in certain connections synonymously with the "alter ego" concept<sup>68</sup>. This issue considered to be parallel to the definition of who is really "the assured" in the case of a corporate assured, which differs from the scope of the Norwegian concept of identification, but it gives an opportunity to reach further conclusions with the help of alter ego principle. However, the concept in UK system is developed through court cases concerning criminal law or the issue of actual fault or privity, and it is not certain that the same result would be seen for misconduct of the assured's servants.

One of the most important case concerning the development of the alter ego principle in the UK was *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705. This famous decision was given by the House of Lords on the ability to impose liability upon a corporation. The decision actually expanded upon the previous decision in *Salomon v Salomon & Co.* [1897] AC 22 and first introduced the "alter ego" theory of corporate liability. According to the case, a ship owned by Lennard's Carrying Co was agreed to transport some goods to the Asiatic Petroleum Company. The ship sank during the voyage and the cargo was lost due to the negligent acts of an individual as director position in the shipping company with violation of the Merchant Shipping Act 1894 in UK. As receiver of the goods, Asiatic Petroleum Co. sued the shipping company for negligence of his director under the mentioned act. The main point was that, whether the guilty acts of a director would be imposed upon the company in other words, if the company was identified with the director.

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<sup>67</sup> Wilhelmsen p.146

<sup>68</sup> Wilhelmsen, p.146

In this case, the House of Lords held that liability could be imposed on a corporation (in the case; shipping company) for the acts of the directors by virtue that the directors are the decision making authority of the company.

Lawyer Viscount Haldane explained the decision making authority as the directing mind principle of corporate liability:

“ ...a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. .... It must be upon the true construction of that section in such a case as the present one that the fault or privity is the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondeat superior, but somebody for whom the company is liable because his action is the very action of the company itself. It is not enough that the fault should be the fault of a servant in order to exonerate the owner, the fault must also be one which is not the fault of the owner, or a fault to which the owner is privy; and I take the view that when anybody sets up that section to excuse himself from the normal consequences of the maxim respondeat superior the burden lies upon him to do so. “

It was actually the most accurate description of the alter ego principle ever made. Prior to this case, main way of imposing liability on a corporation was expressed in terms of vicarious liability, however, that is only applicable to the employees of the company, which excluded the decision making authorities, like the act of the directors. After the this case, the alter ego theory became the most relevant method of imposing liability on a corporation.

As the classic statement of the alter ego principle in the mentioned above context is the person or persons who are decision making authority and directing mind of the corporation, “the very ego and center of the personality of the corporation”<sup>69</sup>. It is also

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<sup>69</sup> The Lady Gwendolen (1965) Lloyd’s rep 335 p.345

stated in this case, "the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondeat superior, but somebody for whom the company is liable because his action is the very action of the company itself"<sup>70</sup>. As a result, it was concluded that the decision making authority of the plaintiff's company, who was also the managing director of the company acting as ships' managers, was deemed to be acting as the company itself.

In a case after this decision, concerning the concept of unseaworthiness according to the UK Merchant Shipping Act, there had been a suggestion that the alter ego principle may be extended to include the registered ship's manager and head of the traffic department of the company, who was not a director or a member of the board of the plaintiff's company<sup>71</sup>. This decision was made in another concept as stated in the decision of *Tesco Supermarkets v. Nattrass* [1972] AC 153, which was a decision of the House of Lords on the directing mind theory of corporate liability, but later it was cited with apparent approval in a later case *Compania Maitim San Basilio S.A. v. Oceanus Mutual Underwriting Assn.* (1976) 2 Lloyd's Rep. 171, concerning the UK MIA section 39 (5) stating that;

“ In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.”

This later approach was also accepted by the court of the *Satr Sea* case<sup>72</sup>. In this case, the court stated that “ the concept of alter ego is more complex where one corporation owns the ship and may be the assured technically, but where the management and responsibility have been placed in the hands of other corporations”<sup>73</sup>. Accepted approach was the aim of the exercise must be the same. The court held that the Cypriot owners of the ship, must be identified with the directors of the English management company

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<sup>70</sup> *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705

<sup>71</sup> *The Lady Gwendolen* (1965) Lloyd's rep 335 p.345

<sup>72</sup> *Wilhelmsen* p.147

<sup>73</sup> *Star sea*. 1997 Lloyd's rep. 360, p.375

and the director of the registered Greek management company. The criteria for the decision was about the function of the individual who was involved in the decision-making processes required for sending the Star Sea to voyage<sup>74</sup>.

In the willful misconduct situations, there is particularly less authority on the issue of identification in UK context. Main reason for that is most cases that have come before the courts, the owner was an individual, or there was no identification problem to cause a doubt as to the person to be regarded as the assured. But, in addition to the concept of identification issue according to the alter ego principle concerning privity, it has been argued that the UK MIA sect. 55 (2) must be supplemented by the normal rules of vicarious liability for the willful actions of the assured's other authorized agents and servants<sup>75</sup>. For that reason, it is hard to say the differences in positions of servants of assured whose acts or omissions are relevant correspond to similar differences in results. This results that if identification provisions would be supplemented by ordinary rules of concerning liability the result may differ. In such a situation, identification will only take place if the servant or agent acts within his authority or mandate<sup>76</sup>. If he has not been delegated for the insured object, those actions will not be counted for the scope of his authority. However, if he possesses the relevant authority of functions of material significance, actions outside this delegation can be invoked against assured<sup>77</sup>.

## **6 Identification of the assured with master and crew**

The regulation relating to the identification of assured with master and crew is a traditional provision and inherent in most marine insurance systems<sup>78</sup>. According to this ancient rule, the insurer may not invoke the faults of master or crew on board the vessel in respect of faults or negligence committed in their service as a seaman. But as can be

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<sup>74</sup> Star sea. 1997 Lloyd's rep. 360, p.375

<sup>75</sup> Hare p.214

<sup>76</sup> Wilhelmsen p.150

<sup>77</sup> Hare p.214

<sup>78</sup> Wilhelmsen p.15

undersood from the concept of the definition, the level of protection for the assured differs in concept.

First difference is about the definiton of the casualty if it is connected to the named peril and all risk systems and relevant to the actions of master and crew and the casualty resulted the loss. In this sense, the faults committed by master or crew on the named-peril system will not be covered unless such cover is specially provided for. This is actually a starting point in common law system<sup>79</sup>. Actually, this named peril provision can be questioned if coverage for such actions can be count in the identification concept.

Second difference is the concept of the protection of the assured if he is insured against all faults. This can be seen in the all risk system, which is the basis of Norwegian marine insurance context, where the situation is opposite then the named peril principle<sup>80</sup>. This system will include casualties directly connected with the acts or ommissions of the master and crew unless there is an exception.

Third difference is relevant to the kind of fault the assured is protected. This issue is similar to the general identification regulation concerning the master and crew that is defined in NMIP §3-36 first paragraph. According to the rule, it is not possible for insurer to invoke the fault or negligence committed by master or crew in connection with their service as seaman. This apprach is related to any fault or negligence concerns general acts or omissions, negligence connected to the lack of seaworthiness or a braech of other more specific duties. In this concept, the provision in NMIP shows a general agreement that faults committed by master and crew is a risk that shipowner has unconditional marine insurance cover.

The important distinction for this provision is that performance of tasks in the commercial functions of master and crew is not counted as tasks for seaman<sup>81</sup>.

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<sup>79</sup> Rose. P, p.265

<sup>80</sup> Wilhelmsen p.151

<sup>81</sup> Wilhelmsen/Bull, p.195



According to the NMIP commentary, identification issue with respect to commercial errors must be resolved using the general rule in paragraph 2 of rule in NMIP § 3-36. The crucial factor will then be whether the master or crew has been given a decision making authority by the company, in matters of material significance for the insurance, e.g in commercial functions. To decide the functions that are in concept of duties in service of seaman, section 19 of Ship Safety and Security act gives clear clues. According to this act, a number of duties have been imposed on the master with regard to ship safety such as; that he must ensure that the ship is loaded and ballasted in a safe and proper manner, that the ship has safe and proper watchkeeping arrangements, that the navigation of ship and keeping of ship's log books are done in accordance with statutory and regulatory requirements. If master will show negligence related to these kind of functions then, that negligence will be in concept of function in connection with service as seaman which results no identification of master as company.

However, as a result of the technological developments that brought continuous communication opportunity between shipowner's land organisation and personnel on board, the master and crew are able to get direct instructions from company. Consistently, when master and crew acted according to the instructions from the organisation on land, any error or negligence must be assessed as though it was committed by the land organisation<sup>82</sup>. Since burden of proof rests on the insurer side, if he will not be able to provide the evidence, it is assumed that the error has been committed by the ones who are working on board ship.

While, in normal case, master or crew is not a part of the decision making authority of a land based organisation in the commercial functions, exceptions have been seen due to the different structure of management implementations. In a situation that shipowner has no land based organisation having authority for aforementioned function, management duties would stay on the master of the ship. As a result of this, master would possibly be identified with the company to the extent that he makes mistakes in

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<sup>82</sup> Commentary, p.113

the performance of those functions<sup>83</sup>. There had been two cases concerning this management function rested on master:

In first case, ND 1993.330 Havstål, the master of M/V Havstål has been found guilty not to prevent the sinking of the ship by seeking assistance or stop water ingress. Master's action was found grossly negligent by the court. At the same time the master was also a major shareholder of the shipowning company and board member. Thus he was delegated with the operation of the company's most valuable possession. As a result shipowning company was identified with the master according to the court.

In second case ND 1995.436 NSC Torson, the master and the mate of the vessel NSC Torson was found to open the bottom valve on purpose. Shipowning organisation that is the owner of the vessel was a family company whose 50% shares were held by the master and mate of NSC Torson at that time. Moreover, they were members of the board of this shipowning company and responsible for the shipping operation. Based on these facts court found that company must be identified with master and mate of the vessel.

In the UK legal context, the problem of the levels of faults that are covered in the identification of master and crew was solved according to the provisions of included and excluded losses which correspond to the UK MIA sect. 55. In the 2<sup>nd</sup> subparagraph of the rule it states,

“... unless the policy otherwise provides, insurer is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew...”

According to this provision, we understand that the assured is protected against the negligence of master and crew, furthermore, will be protected for the losses that are part of a peril insured against even loss would be a part of master and crew. The English International Hull Clauses also contain a strict provision under the perils to be insured

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<sup>83</sup> Wilhelmsen/Bull, p.195

that negligence of master, officers, crew or pilots would be covered by the insurer unless such loss or damage has not resulted from want of due diligence by the assured, owners or managers. In the casualties that resulted by the willful misconduct and intentional acts of the master and crew, the regulation in UK MIA covers only fault, negligence or gross negligence. In such situations it is important to evaluate intentional act of the master and crew caused casualty. On this point, we can see a distinction between the common law and the civil law systems. According to the UK MIA sect. 55 (2), any casualty caused by misconduct by the master and crew will not be covered, unless it is any loss caused by a peril insured against, even though the loss probably would not have happened unless there was not misconduct or negligence of the master or crew<sup>84</sup>. As a result, the assured must be able to prove that the loss is linked by one of the named perils before, not only by misconduct<sup>85</sup>. In case of the deliberate acts of the master or crew striking the ship through a peril insured against, protection is the same, the assured will be covered<sup>86</sup>. Same applies for the acts of the master or crew that were beyond the scope of their employment, even the situations involving the master who was drunk<sup>87</sup>.

However, as a result of the sophisticated means of communication methods presently available, land organisations are directly under contact with the vessels on a daily basis. It is useful to point out that, according to the concept of identification issue, the actions carried out by master as a result of the direct instructions from the organisation on land, any error or negligence committed by master would be assessed as though it was committed by the land organisation itself.

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<sup>84</sup> Wilhelmsen p.152

<sup>85</sup> UK MIA section 55(2)

<sup>86</sup> Arnould §764

<sup>87</sup> Hare pp.212-213

## **7 Shipowning Structures and Shipmanagement Organisation – Relevance in marine insurance context**

In general legal context, shipowner is a person who is legally liable and responsible for the daily operation of a vessel<sup>88</sup>. But in Norwegian context the term reder is used to describe shipowner since reder corresponds to a person or company that runs the vessel for his own account by definition<sup>89</sup>. The owner and bareboat charterer is considered to be reder but time charterers and voyage charterers are not in concept<sup>90</sup>.

However in commercial context, the term owner is more commonly used for a party that has the control of the business of the ship. Most of the charter parties contains terms referenced the owner meaning the operational controller of the vessel like time charterers or voyage charterers. Since legal composition of the shipowner is aimed to describe in this chapter, I am going to use the term shipowner within its legal concept.

The shipowner can be stated as a person who starts up the operation, manages that operation and takes the economic risks of that operation. He normally operates the ship, but as mentioned above in chapter 5, he may delegate his functions typically associated with shipownership to others. If this delegation is of sufficiently broad nature, the one who is delegated will be subject to the rights and obligations associated with the ownership with regard to liability. This means that such individuals or company shall also be liable in a marine insurance contract same as shipowner as assured. Bareboat charterparty is an example to this situation where shipowning functions are transferred to another party<sup>91</sup>.

In short, shipowner shall be a person who operates ship for his own account<sup>92</sup>. It would be more correct to refer such person as a majority shareholder, same time a board member of the organisation and participant in the company managing activities in the

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<sup>88</sup> Falkanger/Bull/Brautaset, p.146

<sup>89</sup> NMC preface

<sup>90</sup> NMC preface

<sup>91</sup> Falkanger/Bull/Brautaset, p.460

<sup>92</sup> Falkanger/Bull/Brautaset, p.149

operation of the ship. In the following parts, I am going to examine some common forms of shipowning entities typically used for ship ownership and try to figure out the position in marine insurance context with regard to the identification issue.

## 7.1 Sole Proprietorships

In general, sole proprietorship is a type of shipping entity that is owned by one individual where no legal distinction is between the owner and the business<sup>93</sup>. In commercial context, the owner receives all profits and has unlimited personal responsibility for all losses and debts. With regard to this power, the owner may operate the vessel himself or delegate the authority to someone else, either an employee or a 3<sup>rd</sup> party.

When marine insurance contract is entered into with an insurer and assured that is part of a shipowning company as in sole proprietorship structure, it is clear that the only person who is owning this organisation will have the power to be identified as company as long as he does not delegate his power that is part of the functions of material significance for the insurance to others.

## 7.2 Shipping partnership / Part ownerships

Since shipowning organisation requires great amount of money for an individual to acquire and operate a vessel, it is a common practice to form a corporation that several persons achieve. On the other hand this corporation can be accomplished as an organisation where the partners hold their personal liability<sup>94</sup>.

Shipping partnership is a way to form such kind of organisation. It is considered to be an old concept but the rules<sup>95</sup> concerning this special type of partnership is quite new. On the other hand, NMC defines the Shipping partnership in section 101 as;

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<sup>93</sup> (Willingale, Malcolm p.11).

<sup>94</sup> Falkanger/Bull/Brautaset, p.151

<sup>95</sup> Norwegian Partnership act of 1985 no.83

“By shipping partnership is meant a firm having for its purpose the business of a reder, where the partners have unlimited liability in respect of the firm’s obligations, either jointly and severally, or in proportion to their holdings in the firm. Joint ownership of a ship which by agreement of the joint owners is to be employed for their common account in the business of a reder is also considered a shipping partnership.”

According to this definition it is clear that shipping partnership is characterised by two or more persons owning and operating vessel together. But, by the formation of partnership, their interests are divided into separate parts in proportion to their ownership shares. This results that the part owners of a shipping partnership organisation are jointly and severally liable<sup>96</sup>. However it is still the case that type of partnership can include a description of different type of agreed liability such as proportion liability or divided liability<sup>97</sup>.

But it is also required for a shipping partnership to have a managing owner in the sense of operational managing function. This differs from the situation the partnership’s actual decision making body as a position in the owning of partnership. According to the NMC section 107 the partnership meeting is the supreme body whereas daily administration is left to the managing owner who is elected in the partnership meeting. This managing owner will have authorisation to institute proceedings on behalf of the partners with binding effect on all of them. This managing owner also has more authoritential functions as stated in NMC section 104 as follows;

“In relation to third parties, the managing reder has by virtue of his appointment the authority to appoint, dismiss and give instructions to the master, to effect insurance cover as customary for a reder, to issue receipts for monies received on the account of the shipping partnership, and to take any other action which the day-to-day management of a shipowning business entails. The managing reder can not without special authority buy, sell or mortgage a ship or conclude a chartering agreement or a lease of a ship of more than one year’s duration.”

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<sup>96</sup> NMC §102

<sup>97</sup> NMC §102

As we see from the regulation, this authority of delegation gives also right to identify the managing owner as the shipping partnership organisation in marine insurance context by effecting insurance cover. More issues on the management organisation will be discussed below.

### 7.3 Limited partnership

This form of partnership is similar to a general partnership. But in addition to one or more general partners who has unlimited liability, there are one or more limited partners. In this type of partnership it is required that at least one partner is attested as a general partner<sup>98</sup>.

The general partners are, in all major respects, in the same legal position as in partnership. Their delegated functions are such as management control, sharing the right to use partnership property, sharing of profits of the firm, and having joint and several liability for the debts of the partnership<sup>99</sup>. The distinction will be for the limited partners whose liability is limited due to the amount of the asset invested for the company.

This type of partnership is regulated by Companies Act of 21 June 1985 no.83 in Norway and by Limited Partnership Acts 1907 in UK. As per Companies Act of 21 June 1985 no.83, the highest authority in a limited partnership is the partnership meeting and the operation of the partnership is delegated to the general partner<sup>100</sup>. The delegation of functions are therefore pursuant to the decisions taken in these meetings, but responsibility of daily management of the organisation rests on the general partner<sup>101</sup>. Moreover if there is a board, general partner will be a member of this board

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<sup>98</sup> Sullivan, Arthur; Steven M. Sheffrin (2003). *Economics: Principles in action*. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. pp. 190

<sup>99</sup> Falkanger/Bull/Brautaset, p.153

<sup>100</sup> Companies act of 21 June 1985 no.83 §3-9

<sup>101</sup> Companies act of 21 June 1985 no.83 §3-10

and he will have power to appoint several managing directors to the partnership<sup>102</sup>. So in the concept of liability and having function as identified as company general partner will be in this position. But limited partners can also have the power if they are delegated such powers by general partners. The limited partner is liable only to the extent of his contributions. However, in general context, the limited partner will lose his limited liability if he takes part in the management of the partnership operation. On the other hand, in English law, limited partnerships are not considered as legally separate entities since the partners are jointly and severally liable and any law suits are filed against the partners by name<sup>103</sup>.

#### 7.4 Limited Liability Companies

Limited liability company is another type of entity that we can see in shipowning structure. In this type of entity, liability is limited to the shareholders' investments, making it possible to get capital from a broad range of participants<sup>104</sup>.

A limited liability company is although a business entity, is a type of unincorporated association and is not a partnership. It is often more flexible than a limited partnership, and it is well-suited for companies with a single owner<sup>105</sup>.

#### 7.5 Joint ventures

Since shipowning companies want to be more strong in the market, they tend to increase their profitability by acquiring several shipowners form a group. In such a case it is clear that interests of the owners lie behind each other with all companies having a common managing owner which has a dominant holding in each company<sup>106</sup>. Each shipowning company can gain commercial advantages without losing their independence. This kind of cooperations are called joint ventures.

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<sup>102</sup> Companies act of 21 June 1985 no.83 §3-11

<sup>103</sup> UK Law commission report on partnership LC283 p.23

<sup>104</sup> Falkanger/Bull/Brautaset, p.156

<sup>105</sup> Stein, Jacob (2011). Asset Protection for California Residents. p. 170

<sup>106</sup> Falkanger/Bull/Brautaset, p.159



There is a contractual basis agreement between the individual shipowners that are a part of joint venture which has an independent legal status. The intention here is to allocate profits to the participant shipowners<sup>107</sup>. This co-operative organisations will generally be a different limited company that manages parties common intersts. Their legal concept is defined under the company law and can partially be thought in the concept of identification since joint venture it has a separate liability from that of its founders.

## 7.6 Management Agreements

Due to the fact that many shipowners entered the shipping sector without having first hand knowledge of shipping, they chose to delegate many of the functions related to the proffessional shipping business to the experts in the domain. We can say that in the concept of the delegation of legal and commercial powers of shipowning functions to others, shipmanagement is the most relevant one. On the other hand sometimes, even shipowners who have the first hand knowledge to operate their vessels find it more expedient to delegate the certain parts of the business to others. Of course here the functions transferred varies according to the need of expertise but in general concept they are done through management agreements between shipowners and ship management companies.

We can define shipmanagement as the professional supply of a single or range of services by a management company seperate from vessel's ownership. As a professional supplier, shipmanager provides services according to the contracted terms and in return for a management fee. Since the nature of the functions transfered and number of parties involved varies, the concept of the liability transfered differs.

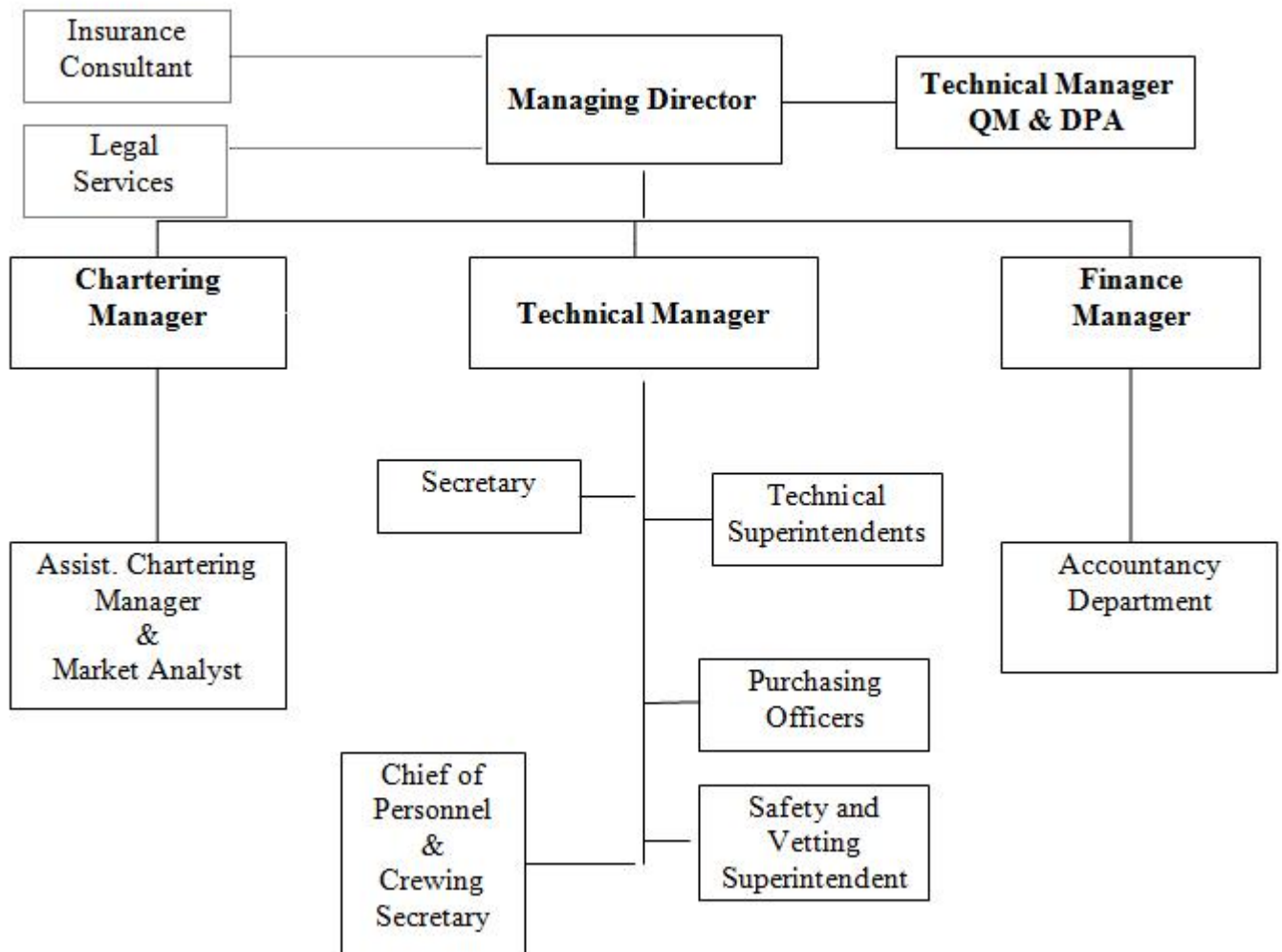
A typical manager in the management agreements would be a partnership or limited company which takes over the management of the ship. By management of the ship it must be understood a range of services mainly composed of technical management,

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<sup>107</sup> Falkanger/Bull/Brautaset, p.159

crew management and commercial management<sup>108</sup>. Figure 7.1 presents a typical organisational structure for a ship management company.

Figure 7.1. Organisation of a typical ship management company



On the other hand, it is also not very seldom that a manager arranges satisfactory insurance for the vessel or obtains employment for the ship. In those situations, managers position would be very similar to the managing owner in a shipowning

<sup>108</sup> Willingale, p.11

partnership<sup>109</sup>. In that concept it must also be noted that, shipmanager would be identified with shipowner in sense of marine insurance contract responsibilities used to be regulated only by shipmanagement contract signed between a shipowner and shipmanager where no direct reference was made to liability issues. With respect to the liabilities arose in situations shipmanagement company acts on behalf of the shipowning company, general agency rules were being applicable.

After the *The Marion* case<sup>110</sup>, referred above chapter 5 the issue of shipmanagers liability began to be examined carefully. It is concluded that shipowners can be identified with the shipmanager in the sense of their delegated functions. However, an agreement between shipowner and ship manager still contains wide –ranging exemptions from liability, to the effect that the owner indemnify and hold harmless the manager if he is exposed to any claim from third parties<sup>111</sup>.

#### 7.6.1 Impact of the ISM Code

One of the most important features in shipmanagement issue is the safety management system the company must establish while operating the ship. This situation is also an obligation according to law as set out in ship Safety and Security Act<sup>112</sup>. This system must be established, implemented, developed and adopted each individual ship that is operated. So, legal effect of the ISM code has given rise to much debate in the recent years. The point here most relevant is the degree to which the shipmanager may take on additional liability as consequence of becoming partly responsible with the code.

The ISM Code itself do not impose itself its own liability regime, but it does require company to carry out the management of ships in a particular manner<sup>113</sup>. In the context of the code company means;

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<sup>109</sup> Falkanger/Bull/Brautaset, p.160

<sup>110</sup> *The Marion* (1984) 2 Loyd's rep

<sup>111</sup> Falkanger/Bull/Brautaset, p.161

<sup>112</sup> Ship Safety and Security Act of 16 February 2007 no.09 section 7

<sup>113</sup> Willingale p.135

“the owner of the ship or any other organisation or person such as the manager or bareboat charterer who has assumed the responsibility for the operation of a ship from the shipowner and who, on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the code<sup>114</sup>,”

The implementation of the ISM Code is carried out through the safety management system. The obligation to accomplish and run the safety management system lies with the person who has assumed responsibility for the operation of the ship. In case of a ship given out to third party technical management, this will mean the manager becomes the person who has assumed responsibility for the operation of the ship<sup>115</sup>.

One of most important invention of ISM Code is the key person called as designated person ashore. This person establish the connection between the vessel and management of the company. So designated person has the contact with the highest level of the management. But it is a question that in shipmanagement agreements who is the highest level of management, the shipowner or the ship manager?

The answer to this question lies within the legal position of the shipmanager. As it has been examined above, the shipmanager although binds the owner by his acts or omissions acts as agent of the owner<sup>116</sup>. Since the ship manager acts in an agency capacity, any liability for the operation of the ship passing from owners to the manager is private, and does not make difference to third parties. This results for a third party to look to the shipowner as the principal responsible for the safe and efficient operation of the ship.

The other aspect of this reality is that there are certain duties of shipowner which cannot be delegated in any case whatever contractual device he employs or whether a ship manager is employed or not. This situation is similar to the one stated in the NMC section 151 as the vicarious liability of the owner. On the other hand his basic

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<sup>114</sup> ISM code article 1.1.1

<sup>115</sup> Willingale p.135

<sup>116</sup> The Marion (1984) 2 Lloyd's rep

obligation of exercising due diligence to provide seaworthy ship lies under Hauge/Visby Rules<sup>117</sup>. This is called a non-delegable duty<sup>118</sup>.

In some cases the shipowner may not have the actual knowledge of the events giving rise to the loss, if he has given a comprehensive delegation to a shipmanager. In that situation, the acts or omissions of the manager which if the owner had been acted would result the loss of the right to limit the liability, would not cause the loss of shipowner's right to limit because of the fact that there was no act or omission the owner did. The burden of this will be the designated person would be reporting to the shipmanager not owner. So it proves that highest degree of management would be the shipmanager not the owner in the sense of safe operation of vessel.

Last situation is parallel to the extended identification for breach of safety regulation that I mentioned in chapter 5. In that case insurer may invoke a breach of the safety regulation made by anyone who has duty on behalf of the assured to comply with the regulation<sup>119</sup>. Significance from this concept is that there is no need given authorization for a party breaching the safety regulation in Norwegian context. This is a result of the special regulation of extended identification for breach of safety regulation which is a part of the Norwegian marine insurance system.

As the same sense in English context, although it will not be the highest level in the management company that designated person is reporting, it will be the management company that is aware of events regarding the safety of the vessel, or lack of seaworthiness, owner will still bear the ultimate responsibility regarding these duties<sup>120</sup>. Ship owner will not be able to delegate his responsibility for seaworthiness.

The other area of increased risk for shipmanager is not only as a result of the ISM Code itself but by its conjunction with Institute Time Clauses Hulls 1/11/95, which extends

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<sup>117</sup> Hauge Visby Rules as amended by the Brussels Protocol 1968, Article 3

<sup>118</sup> Willingale, p.136

<sup>119</sup> NMIP §3-25

<sup>120</sup> Willingale p.137

the obligation of due diligence to superintendents or any of their on shore management in relation to claims arising from crew negligence. If hull insurers decline claims, it will be more likely than not that the act or omission will have been that of manager and his crew<sup>121</sup>.

## **8 Concluding Remarks**

The issue of identification is rather complicated with respect to many other problems in marine insurance context. Moreover, the approach to identification of assured with his servants, in Norwegian and English marine insurance is different. Where the Norwegian system is based on special regulation concerning the identification issue with a systematic approach developed in Scandinavian law, the starting point in the English system is that the assured is responsible for the actions made by those in respect of general liability principles. This results that it is more complicated to define common questions about the regulation. Since the regulation concerning responsibility of others is found in the general legislation, not just specifically in marine insurance, it became difficult to provide general conclusions focused on marine insurance. With this regard the distinctions between the acts of the parties where the assured is responsible for and question who is acting on behalf of assured become much complicated.

However, as we saw in chapter 4, the legal starting point in the identification between the assured and his servants is not very certain. Where identification between assured and senior servants are not regulated, it becomes difficult to determine the identification because of his delegated functions of material significance for the insurance by shipowner.

As the modern role of shipmanager has been more clearly defined, a need for clarification of his responsibilities and liabilities arose. In recent past, shipmanager's concept in the hierarchy of the organisation more clearly defined. It is also important to

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<sup>121</sup> Willingale, p.138

aware of the distinction between the problem who acts as the assured and the identification of the assured with his servants. In the first case the issue is solved as per general company law principals, whereas latter is an marine insurance law issue. It is also concluded in chapter 5 that servants that have no special delegation that are significance to marine insurance contract cannot be identified as assured. Also it is generally accepted provision in marine insurance context that assured is protected against the negligence of master and crew, the functions as a result of their service as seaman.

Since in UK marine insurance legislation, that is part of common law approach, identification issue is not expressly regulated, alter ego doctrine is used to deal with identification problem<sup>122</sup>. But more or less this alter ego rule is applicable in situations where a shipowning organisation is punished or sentenced in the privity concept under strict regulations such as Merchant Shipping acts<sup>123</sup>.

The formation of the shipowning organisations also give us an important clue about the identification issue since the composition differs in the function of management bodies. Hierarchical structure of the company in decantralised fuctions such as seen in the management organisations leads different responsiibility for employers. It is also seen that in UK context, assured will be responsible for the actions made by he employees where he carries legal responsibility for. But in Norwegian context as a result of systematic approach to the issue, identification is more limited to servants in leading positions including the responsibilty in the hierarchical concept of the organisation.

It is also seen that the concept of identification and solutions are discussed in Norwegian marine insurance Plan and Commentary. To achieve a general systematic set of rules about this identification issue in legislations that do not deal with this kind of problem, Norwegian approach may be used as a guide.

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<sup>122</sup> Ibid p.30

<sup>123</sup> Wilhelmsen p.170

## 9 Reference table

### List of Judgements/Decisions

Compania Maitim San Basilio S.A. v. Oceanus Mutual Underwriting Assn. (1976)  
Lloyds Rep. 171  
Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705  
ND 1973.428 NSC HAMAR KAPP-FERGEN  
ND 1991.214 MIDNATSOL  
ND 1993.330 Havstål  
ND 1995.436 NSC Torson  
Salomon v Salomon & Co. [1897] AC 22  
Star Sea. 1997 Lloyd's rep. 360  
Tesco Supermarkets v. Natrass [1972] AC 153  
The Lady Gwendolen (1965) Lloyd's rep 335 p.345  
The Marion (1984) 2 Lloyd's rep

### Treaties/Statutes

Hauge Visby Rules as amended by the Brussels Protocol 1968  
International Hull Clauses of 01.11.2002 as revised on 01.11.2003  
Institute Time Clauses Hulls 1/11/95  
Limited Partnership Act 1907  
Marine Insurance Act of 1906  
Norwegian Maritime Code of 24 June 1994 no 39 with later amendments up to and including Act 26 March 2010 no.10  
Norwegian Marine Insurance Plan of 1996 version 2010  
Norwegian Insurance Contracts Act of 16 June 1989  
Norwegian Partnership Act of 21 June 1985 no.83  
Ship Safety and Security Act of 16 February 2007 no.09



### Secondary Literature

- Anderson, Phil: ISM Code- A practical guide to the legal and insurance implications 2<sup>nd</sup> Edition (2005)
- Arnould's Law of Marine Insurance and Average, London (1981)
- Commentary to the Norwegian Marine Insurance Plan of 1996 version 2010
- Deakin, Simon/ Johnston, Angus/ Markesinis, Basil Tort Law (2012)
- Falkanger/Bull/Brautaset: Scandinavian Maritime Law- The Norwegian Perspective 3<sup>rd</sup> Edition (2011)
- Gard handbook on P&I Insurance (1996)
- Hare, John: Shipping Law (1999)
- J. Franklin, The Science of Conjecture: Evidence and Probability Before Pascal (Baltimore: Johns Hopkins University Press, 2001), 273-278
- Laski, H. 'Basis of Vicarious Liability' (1916) 26 Yale Law Journal 105
- Lyngso, Preben: Danish Insurance law (1992)
- Noussa K, History of Marine Insurance in England
- Rose, F.D.: Marine Insurance Law and Practice (2004)
- Sullivan, Arthur; Steven M. Sheffrin (2003). Economics: Principles in action. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall.
- UK Law commission report on partnership LC283 p.23
- Staring S. Graydon: Article on Uberrima Fides And Concealment in the Marine Policy Application (2001)
- Steele, Jenny: Tort Law (2007)
- Stein, Jacob (2011). Asset Protection for California Residents.
- Wilhelmsen, Trine Lise/Bull, Hans Jakob: Handbook in Hull Insurance (2007)
- Wilhelmsen, Trine-Lise: Issues of marine Insurance. Misconduct of the assured and identification, SIMPLY Scandianvian Institue Yearbook of Maritime Law 2002, pp. 117-172
- Willingale, Malcolm: Ship Management 3<sup>rd</sup> Edition (1998)

## **10 List of tables and figures**

Figure 7.1. Organisation of a typical shipmanagement company

## **11 List of abbreviations**

NMC – Norwegian Maritime Code of 24 June 1994 (No.39)

NSC – Norwegian Supreme Court

P&I – Protection and Indemnity

MIA – Marine Insurance Act of 1906

ITC – International Time Cluses

NMIP – Norwegian Marine Insurance Plan of 1996 version 2010

ICA – Insurance Contracts Act of 1989

IHC – International Hull Clauses of 01.11.2002 as revised 01.11.2003

B.C. – Before Christianity

UK – United Kingdom

ISM – International Safety Management Code of 2010